

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION THIRTEEN

STEPAN COMPANY

Employer

and

Case 13-RC-21254

GENERAL CHAUFFEURS, SALES  
DRIVERS AND HELPERS UNION,  
LOCAL 179, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS,  
AFL-CIO

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on the petition was held on October 8, 2004, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine an appropriate unit for collective bargaining.<sup>1</sup>

**I. ISSUES**

The Petitioner seeks an election within a unit comprised of approximately six scale house employees employed by the Employer at its facility currently located at 22500 West Millsdale Road, Elwood, Illinois. The Employer challenges the appropriateness of the unit by maintaining that disputed employees are employed in the capacity of guards within the meaning of Section 9(b)(3) of the Act. Additionally, the Employer asserts that the petition is premature because the Employer has plans to change the scope and function of the scale house employees in the near future. The Employer therefore contends that the petition must be dismissed under the premature petition doctrine or pursuant to Section 9(b)(3) of the Act. It is undisputed that the Petitioner represents and accepts into membership employees who are not guards within the meaning of the Act. The Petitioner, on the other hand, maintains that the scale house employees do not perform any job functions traditionally performed by guards nor do they possess or perform any guard-like responsibilities or duties within the meaning of Section 9(b)(3) of the Act. As such, the

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<sup>1</sup> Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Petitioner argues that the scale house employees are not guards and seeks to have the Regional Director direct an election in the unit noted above.

## **II. DECISION**

For the reasons set forth below, including the absence of any traditional indicia of guard status, such as employee training in security procedures, weapons training and possession, participation in security rounds or patrols, job functions that include the monitoring or controlling of access to the Employer's or other premises, or the wearing of uniforms, I find that scale house employees are not guards within the meaning of Section 9(b)(3) of the Act.

The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time scale house employees employed by the Employer at its plant currently located at 22500 West Millsdale Road, Elwood, Illinois; but excluding all office clerical employees, all professional employees, all guards and supervisors as defined in the Act, and all other employees.

The unit found appropriate herein consists of approximately 6 employees for whom no history of collective bargaining exists.

## **III. STATEMENT OF FACTS**

The Employer, the Stepan Company, operates a chemical manufacturing facility in Elwood, Illinois known as the Millsdale plant. The chemical plant produces intermediate chemical products, surfactants, primarily used in the manufacture of laundry detergents, shampoos, and other common cleaning products.<sup>2</sup> The Millsdale plant is located on a 600 acre parcel housing a variety of shipping and receiving venues (barge, railroad, and truck) as well as a fenced-in 100 acre production area consisting of a main building, laboratory, scale house, and a production area consisting of a complex matrix of pipes, tanks, pumps and mixing equipment used to manufacture the intermediate chemical products. There are approximately three hundred and fifty employees at the facility.

According to the documents and testimony submitted by the Employer in this matter, access to the plant is currently controlled through three guard stations staffed by uniformed security guards provided by Burns Security, an outside contractor. There is a guard posted 24 hours a day 7 days a week at a sentry point on the main road coming into the plant, a guard posted at an interior entrance, designated gate three, during regular business hours on weekdays, and a guard posted 24 hours a day 7 days a week in the scale house. Based on the Employer's documents, the uniformed guard posted at the exterior sentry point controls the employees, contractors, visitors, and truckers as they enter the property. The uniformed guard at gate three controls contractor vehicle and box trailer access into the plant. This security guard is

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<sup>2</sup> The Employer does not claim, nor is there any evidence in the record showing, that the Employer operates as a professional security firm within the meaning of *The Illinois Private Detective, Private Alarm, Private Security, and Locksmith Act of 2004*, 225 ILCS 446/1 et seq.

specifically required to search packaged raw material delivery trucks and ensure that the driver and passengers are wearing hardhats, safety glasses, long-pants, and shirts with sleeves. The guard in the scale house controls tank truck traffic into the plant through gates one and two. Gates one and two provide access to the two truck scales operated by the scale house employees. These two gates also provide entry points into the production areas of the plant. Ken Heberer, Site Security Officer, is responsible for the overall security of the plant, and he reports to Plant Manager Gary Traverso. Mr. Heberer does not directly supervise the scale house employees.

The six scale house employees at issue perform job duties related almost exclusively to the Employer's shipping and receiving function. As truck traffic passes through the main gate sentry point to drop off or pick up product, the scale house employees take control of the traffic and direct the various vehicles to their proper destinations. Along the way, the scale house employees undertake a variety of duties including the processing of the load transfer paperwork, inspection of incoming product, determination of the relative weight of the product, and also process a variety of forms used by various other departments. Traffic Supervisor Kathy LeBran has direct supervisory authority over the six scale house employees. LeBran reports to Michael Cieslak, Traffic Department Manager. The scale house is located adjacent to the main building where the Company's office, engineering spaces, and laboratory are housed. There are two truck weighing scales situated near the scale house that are used for determining the amount of goods and materials entering and leaving the facility on trucks. The Employer estimates that approximately 1,800 trucks a month pass through the gates of the facility for production-related purposes. The scale house is materially involved in processing and maintaining the shipping and receiving paperwork on approximately 1,500 of the trucks on a monthly basis.

With respect to the specific duties of Traffic Department scale house employees, there is no dispute that they are intimately involved in the Employer's overall production process. All raw or semi-processed materials delivered for use in the Employer's production processes, much of it in bulk, are recorded, inspected, and either accepted or rejected through a series of departmental processes on a daily basis. The same is true for outgoing product. While the evidence shows that the Millsdale facility ships and receives goods and materials through a variety of means (rail, barge, and truck), the duties of the disputed scale house employees is centered almost exclusively on the processing of truck traffic making pickups and deliveries at the plant. According to Leonard Overcash, Sr., a scale house employee with sixteen years of experience with the Employer, eight of which has been spent as a scale house employee, testified without contradiction that he spends in excess of 90 percent of his work time coordinating and processing the truck traffic passing through the facility.

According to Traffic Manager Cieslak, truck traffic is passed through the facility and guided to its proper logistics point through a scheduling system operated and controlled from the Employer's home office located in Northfield, Illinois. After the schedule is developed by the headquarters, the scheduling information is provided to the Millsdale facility's Traffic Department Supervisor Le Bran, who takes the incoming and outgoing product schedule and matches it up with an available transport carrier on a 24 hour, 7 day a week basis. According to employee Overcash, scale house employees are then scheduled to provide 24 hour coverage of the scale house for incoming truck traffic, the majority of which pass through the plant between 7:00 a.m. and 3:30 p.m. Scale house personnel covering the scale house operation are graduated to facilitate the volume of truck traffic through the facility – during the weekday between 5:00 a.m. to 7:00 a.m. there are two scale house employees; between 7:00 a.m. through 1:00 p.m.

there are three scale house employees; between 1:00 p.m. and 3:00 p.m. there are two scale house employees on duty; and, for the remainder of the day there is a single employee staffing the scale house. During weekends, a single scale house employee provides coverage of the scale house.

As noted, the vast majority of the scale house employees' job functions relate to receiving, checking, and maintaining accurate records for inbound and outbound materials passing through the facility. However, there are a variety of other duties the passing through scale house employees perform. For example, the scale house employees are responsible for visitors to the plant during off shifts and during the receptionist's lunch hour. During regular business hours, visitors are passed through the main office by the scale house employees where the receptionist verifies the identity of the visitor and notifies the appropriate party. It is the responsibility of the persons receiving the visitor to meet the party in the Main Office Lobby and escort the visitor back when their business is concluded. The scale house employees also provide coverage for the telephone switchboard during off shifts as well as provide drop-off and pickup for the outgoing and incoming U.S. mail. The scale house employees also have some responsibility for maintaining emergency communications with employees in the plant as well as with outside authorities such as the Coast Guard, fire department, or police, during weather events, fires, chemical spills, and other incidents involving the Employer's in house Emergency Response Team. For example, if there a problem unloading a river barge, the scale house employees would receive the call for assistance. Then it would be the responsibility of the scale house employee to contact the in-house emergency response team, the coast guard, or another appropriate governmental agency and request assistance. The scale house employees do not themselves respond to the problem; rather, they are responsible for maintaining communication between the various groups responding to the problem. For example, the scale house employees also on occasion monitor television monitors connected to four cameras that view limited areas of the exterior of the plant. These cameras are used to monitor incoming truck traffic and the plant's parking lots. Scale house employees receive no security training and are not required to prevent any vandalism or theft in the parking lots or other exterior areas under surveillance. Scale house employees, as well as all other employees in the plant, however, are instructed to contact the proper authorities or supervision to report security breaches.

The Employer also presented evidence concerning a new access control system, which it maintains will have an impact of the scope and composition of the disputed unit. The record evidence shows that the access control changes have been in the formulation stage for about two years, and the Employer has recently approved funding of the project. According to the documents submitted by the Employer, the plans are to reconfigure access to the plant by, *inter alia*, placing additional fencing around the scale house, reconfiguring and strengthening the reception area access in the office, and installing a computerized turnstile system at the scale house walkway between the scale house and the office building. Additionally, the gates approaching the two truck scales would be modified and strengthened, and well as other improvements in the scale house including installing a teller type slide drawer in the scale house and a intercom phone system just outside the turnstiles, with one located inside the scale house for use by truck drivers and employees who forget their computer access cards. The Employer anticipates that these changes will do away with one current guard sentry point located at the entrance of the facility. From the documents submitted by the Employer, that will leave two uniformed security guards stationed at the scale house and the third gate.

#### IV. DISCUSSION

As noted above, I find that the scale house employees operating out of the Employer's Millsdale facility are not guards within the meaning of Section 9(b)(3) of the Act.

Section 9(b)(3) of the Act provides that labor organizations which admit into membership employees who are not guards may not be certified as the collective-bargaining representative of a unit of guards. Section 9(b)(3) also defines a guard as "any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of person on the employer's premises." See *J.C. Penney Co.*, 312 NLRB 32 (1993). That is to say, under Board law, an employee is a guard if the employee's basic function is the protection of property of the employer or its customers, and the employee must be "directly and substantially" engaged in the protection of the Employer's property. *Pony Express Courier Corp.*, 310 NLRB 102, 103 (1993). Merely inspecting or "checking" production for accuracy or count does not make a person a guard. *Tac/Temps*, 314 NLRB 1142, 1143 fn. 5 (1994). Similarly, the performance of job duties associated with the observing and reporting violations of rules does not necessarily constitute guard duties within the meaning of the Act. *Lion Country Safari*, 225 NLRB 969, 970 (1976). Instead, the Board considers the characteristics of the employee's duties and of the employer's operations. *Arcus Data Security Systems*, 324 NLRB 496, 496-497 (1997). Specifically, the Board has found that employees are guards within the meaning of the Act if they are charged with guard responsibilities that are not an incidental or minor part of their overall job responsibilities. *Rhode Island Hospital*, 313 NLRB 343, 247 (1993). Guard responsibilities include those typically associated with traditional police and plant security functions, such as the enforcement of rules directed at other employees, the possession of authority to compel compliance with those rules, training in security procedures, weapons training and possession, participation in security rounds or patrols, the monitoring and control of access to the employer's premises, and wearing guard-type uniforms or displaying other indicia of guard status. *Wolverine Dispatch, Inc.*, 321 NLRB 796, 798 (1996); *55 Liberty Owners Corp.*, 318 NLRB 308, 310 (1995);

In the instant matter, it cannot be disputed that the vast majority of job duties of the scale house employees do not encompass any of the traditional indicia of statutory guard status. See, e.g., *The Boeing Company*, 328 NLRB 128, 129-130 (1999). Specifically, the scale house employees are not trained in any aspect of security procedures; do not participate in nor are they required to participate in weapons training and possession; do not participate in security rounds or patrols; and are not charged with the duty to protect the Employer's facility in cases of imminent danger. Instead, the basic function of the scale house employee is to provide production-related direction and control to incoming and outgoing truck traffic and perform a myriad of clerical duties pertaining to the billing and record keeping requirements for incoming and outgoing products. These duties stand in sharp contract to the typical duties of security personnel who, as noted by the Board in *Deluxe General Incorporated*, 241 NLRB 229, 230, "perform a role apart from the actual production process and are often most active when production has ceased."

In its brief, the Employer argues that all the duties of the scale house employees “go to the core of enforcing against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer’s premises.” Furthering its argument, the Employer maintains the any one of the various job duties of the scale house employees requires the scale house employees to report the infractions of the various rules to supervision. The Employer additionally notes that simply because the scale house employees lack any traditional police functions is not dispositive of whether they are guards within the meaning of the Act, and that the Board has found time and again that employees classified as Scale House Security Guards are guards within the meaning of Section 9(b)(3) of the Act. In support of this claim, the Employer cites *Walterboro Manufacturing Corp.*, 106 NLRB 1383 (1953), *Raymond Metal Products*, 223 NLRB 127 (1976), *Jakel Motors, Inc.*, 288 NLRB 730 (1988) and *Rhode Island Hospital*, 313 NLRB 343 (1993). I find these cases to be plainly distinguishable from the case at hand.

Specifically, in *Walterboro*, the Board found that watchmen who spent 75% of their time performing unit work were found to be guards where they spent 25 percent of their time performing traditional guard duties such as performing security rounds or patrols, punching the employer's time clocks at regular intervals, and reporting infractions of company rules. 106 NLRB at 1384. In the instant case, there is no evidence in the record showing that the scale house employees perform any traditional guard duties such as making security rounds or patrols and punching time clocks at any time during their work day. Moreover, the performance of job duties associated with the observing and reporting violations of rules without the attendant duty or obligation to enforce those rules does not constitute guard duties within the meaning of the Section 9(b)(3) of the Act. *Lion Country Safari*, 225 NLRB 969, 970 (1976). Moreover, such facts are not presented in the case at hand. The same characteristics distinguishing the instant case from *Walterboro* are apparent in *Raymond Metal Products*, 223 NLRB 127 (1976). There, the two disputed employees, storeroom clerks, substituted regularly for the plant guards. The Board determined the storeroom clerks to be guards because “at-least 25 percent of the storeroom clerks’ working time is spent substituting for the regular guards and that the performance of guard duties during this period is a continual part of their job responsibility.” 223 NLRB at 128. In the instant case, there is no evidence in the record showing that the scale house employees substitute for the statutory guards at the various gates at any time during their workday. Thus, I find that *Raymond Metal Products*, like *Walterboro*, is plainly distinguishable from the employees at issue here.

The Employer also relies on *Jakel Motors, Inc.*, 288 NLRB 730 (1988) and *Rhode Island Hospital*, 313 NLRB 343 (1993) for the proposition that the scale house employees are guards within the meaning of the Act. I do not find these cases applicable to the matter at hand. Specifically, In *Jakel Motors*, the disputed employees performed both maintenance and security functions during the night shift. The traditional security duties performed by the employees, included, *inter alia*, two security sweeps or patrols through the entire facility at the beginning and midway during the shift, as well as checking all doors and windows twice during a shift ensuring they were locked and secure. *Id* at 742. In the instant case, the record does not show that the scale house employees perform any such duties during the night shift.

In *Rhode Island Hospital*, the disputed employees, dispatchers and shuttle van drivers, each possessed job functions related solely to the protection of property and individuals. In this regard, the dispatchers, among their other duties, were charged with monitoring of security cameras in the hospital where they were directly responsible for being alert to any incident, situation, or problem, needed a response. They then acted on that situation the Board decided that such responsibilities were not merely incidental to their other duties, but instead constituted one of their primary job functions, and provided “an essential link in the Hospital’s effort to safeguard its employees and enforce its rules.” 313 NLRB at 347.

Specifically, the employees found to be guards in these cases each consistently performed a set of job duties traditionally performed by Section 9(b)(3) security guards; that is to say, they consistently performed jobs duties that focused solely on the job of protecting the property of the employer or protecting the safety of person on the employer’s premises. *J.C. Penney Co.*, 312 NLRB 32 (1993).

In the instant case, however, there is no evidence that the essential or primary job duties performed by the scale house employees encompassed such surveillance and reporting duties, and I find that the limited monitoring and reporting duties performed by the scale house employees are incidental to their primary non-guard duties and are not dispositive of their guard status. See, e.g. *55 Liberty Owners Corp.*, 318 NLRB 308, 310 (1995). Similarly, the Board found in *Rhode Island Hospital* that shuttle van drivers were guards despite the fact that their main duty was to shuttle employees from building to building. *Rhode Island Hospital*, 313 NLRB at 347. The Board noted, however, that the shuttle drivers at issue were responsible for reporting security problems and rule violations, and were charged with personally “respond[ing] to threatening situations when needed.” *Id.* Accordingly, the Board found that the shuttle van drivers were specifically charged by their employer with guard responsibilities that were more than a minor or incidental part of their driving duties. *Id.* Therefore, *Rhode Island Hosp.* does not support the Employer’s argument because the employees at issue in that case were charged with the duty of responding to threatening situations and were specifically found to possess guard-like duties beyond merely monitoring and reporting security problems.

Despite the fact that the cases it cites are readily factually distinguishable from the employees at issue, the Employer nonetheless maintains that the primary functions of the scale house employees are at their core designed to protect the safety of plant personnel and property. In essence, the Employer argues that the act of directing traffic at truck entrances and exits at the facility for production purposes also provides an integral part of the plant’s overall safety and security. I find, however, that this expansive reading of Section 9(b)(3) is wholly unsupported by the applicable case law as described above. Rather, as part of the production process, the scale house employees monitor, control, direct, and record a variety of *information* about incoming and outgoing truck traffic to ensure dependable, timely and accurate transfer of goods and materials to and from the Employer’s Millsdale facility. As such, the scale house employees’ duties do not present them with the potential for divided loyalty where they are called upon to protect property against fellow union members, particularly during a labor dispute, which is the recognized function of Section 9(b)(3). See, e.g., *McDonnell Aircraft Co.*, 827 F.2d 324, 329 (1987).

The Employer also argues that the changes planned for the access control system will materially change the scope and composition of the unit sought by the Petitioner. I do not so find. Specifically, there seems to be no evidence that either the scope (location) of the unit, or the composition, the job classifications included in the unit, will be changed in any way by the proposed access control system changes. The evidence shows that there may be some additional duties assigned to the scale house employees as a result of the changes, however, these changes will not materially detract from their primary duties related to the shipping and receiving function of the plant. Specifically, The Employer's documentary summary of the scale house changes show that the scale house employees will have to manually pass employees who forgot their key cards through the turnstile, as well as perform other miscellaneous duties regulating entry into the facility such as operate the larger pass-through gate for package delivery, and use an intercom located along the east side of the roadway near the first scale gate. These contemplated changes in themselves are not sufficient to confer Section 9(b)(3) guard status on the scale house employees. See *Wolverine Dispatch, Inc.*, 312, NLRB 796 (1996).

In sum, I find that field technicians possess none of the responsibilities necessary to support the Employer's claim that they are guards within the meaning of Section 9(b)(3) of the Act. Accordingly, I conclude that field technicians are not guards within the meaning of Section 9(b)(3) and that the Petitioner is therefore eligible to serve as their representatives for purposes of collective bargaining, if so elected.

## **V. DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned, among the employees in the unit found appropriate at the time and place set forth in the notice of intent to conduct election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of the issuance of the notice of intent to conduct election, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strikes who have retained their status, as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the unit who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are former unit employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by General Chauffeurs, Sales Drivers and Helpers Union, Local 179, International Brotherhood of Teamsters..



## **VI. NOTICES OF ELECTION**

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be stopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

## **VII. LIST OF VOTERS**

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 13's Office, Suite 800, 200 West Adams Street, Chicago, Illinois 60606 on or before November 12, 2004.

No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

## **VIII. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by November 19, 2004.

DATED at Chicago, Illinois this 5<sup>th</sup> day of November 2004.

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Gail Moran, Acting Regional Director  
National Labor Relations Board  
Region Thirteen  
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CATS — Voter Eligibility—Statutory Exclusions

Blue Book 401-2575-2800

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